APPENDIX

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

NO. 71-1051

PARIS ADULT THEATRE I, ET AL,

Petitioners,

vs.

LEWIS R. SLATON, DISTRICT ATTORNEY,
ATLANTA JUDICIAL CIRCUIT, ET AL,

Respondents.

ON WRIT OF CERTIORARI
FROM THE SUPREME COURT OF GEORGIA

PETITION FOR REHEARING

Paris Adult Theatre I and Paris Adult Theatre II, Petitioners in the within proceedings, by and through their counsel present this, their Petition for a rehearing of the above entitled cause,

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and in support thereof respectfully show:

The decision and order of this Honorable Court was issued on June 21, 1973 and the majority of the Court concluded the text of the opinion with the following sentence:

> "The judgment is vacated and the case remanded to the Georgia Supreme Court for further proceedings not inconsistent with this opinion and Miller v. California, supra. See United States vs. 12-200 Ft. Reels, ____ U.S. ____, (p. 7, n.7)(1973)."

The petition for rehearing of decision and judgment of this Court is filed pursuant to Rule 58(1) of the U. S. Supreme Court Rules and is being submitted within twenty-five (25) days after entry of judgment as required.

As grounds for this petition, Petitioners respectfully request the

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The petition for rehearing of decision and judgment of this Court is filed pursuant to Rule 58(1) of the U. S. Supreme Court Rules and is being submitted within twenty-five (25) days after entry of judgment as required.

As grounds for this petition, petitioners respectfully request the

Court's consideration of the following:

I.

THE VACATION OF THE JUDGMENT IN THIS CASE AND THE REMAND TO THE GEORGIA SUPREME COURT FOR "FURTHER PROCEEDINGS" LEAVES UNCONSTITUTIONALLY VAGUE WHAT THE DUTY IS THAT IS IMPOSED UPON THE APPELLATE COURT WITH REGARD TO "FURTHER PROCEEDINGS."

This Court concluded its decision of the Court in this case with the following ruling:

> "The judgment is vacated and the case remanded to the Georgia Supreme Court for further proceedings not inconsistent with this opinion and Miller vs. California, supra. See United States vs. 12-200 Ft. Reels, ____ U.S. ____, (p.7, n. 7)"

One reading the decisions of this Court promulgated on June 21, 1973 and the viewing of the actions of this Court invacating and remanding to the

Court's consideration of the following:

1.

lower courts of approximately sixty (60) other obscenity cases for "further proceedings" would most assuredly be left in a quandary as to what the various State and federal appellate courts are supposed to do with the cases upon remand.

Several possibilities may be suggested as to what the Court has done by its decision to the case at bar. If the action of the Court viewed by competent counsel for the various parties and others similarly situate, provokes a sharp difference of opinion as to the intended and probable effect of the various decisions, how then can men and women not trained in the law understand the exquisite and subtle meaning suggested by the plain words of the decisions. Among the possible inferences to be drawn as to what the "further proceedings" are that are to be considered by the Georgia Supreme Court in the case

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at bar are the following:

A. THE GEORGIA SUPREME COURT MAY REVIEW THE EVIDENCE TO DETERMINE WHETHER THE MOTION PICTURE FILMS ARE OBSCENE IN THE CONSTITUTIONAL SENSE UNDER THE NEWLY ANNOUNCED TRI-PARTITE TEST SET FORTH IN MILLER VS. CALIFORNIA, _____U.S. ____ (1973).

This view is taken by many prosecutors across the land as judged on the basis of newspaper accounts and as United Press International and Associated Press summaries would indicate.

Counsel for Paris Adult Theatres would reject this suggested approach on the basis that the Georgia statutory scheme, employing as it does the utilization of a statutory definition lifted out of the opinion of the plurality in Memoirs vs. Attorney General, 383 U.S. 431 (1966), would concededly be a more

as they are the following:

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Roaden vs. Kentucky, Supra, 413 U.S.
at (1968), would conceivably be a more

liberal test than the permissible scope of regulation set forth in Miller vs. California, supra., and the Georgia Supreme Court could hardly be expected to find the motion picture films involved in this case to be protected expression under this less liberal and more restrictive doctrine.

If this were the intended and probable course of action envisioned by the majority of this Court in vacating the judgments and remanding for further proceedings the approximate sixty-eight (68) cases involving obscenity-pornography, as it did on June 21 and June 25, 1973, then each of those sixty-eight (68) cases, together with each and every new case that has already arisen in the interval since the Court's decision and which will continue to arise, will be back to the Court's docket, and the fears of an inundation of obscenity cases as suggested

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by Mr. Justice Brennan and rejected by the majority will no longer be a fanciful guesstimate, but a realistic problem.

B. THE GEORGIA SUPREME COURT MAY REVIEW THE STATUTE AS ENACTED BY THE LEGISLATURE TO DETERMINE WHETHER IT CAN AUTHORITATIVELY CONSTRUE THE SAME TO ENGRAFT UPON IT THE CONSTITUTIONAL STANDARDS SET FORTH IN MILLER VS. CALIFORNIA, WHILE NOT APPLYING THE PURELY PROSPECTIVE RULING TO THE PARTIES BEFORE THE COURT.

This Court, by its majority opinion in vacating and remanding the judgment of the Georgia Supreme Court in the case at bar, made special effort to refer to the parties (n.7, p. 7 of the slip opinion in U. S. v. 12-200 Ft. Reels).

The footnote reads in pertinent part as follows:

> "We further note that, while we must leave to State courts the construction of State legislation, we have a duty to authoritatively construe federal statutes where 'a serious doubt of constitutionality is raised. . . 'and construction of the statute is fairly possible by which the question may be avoided.'

If we are to take that part of the note and apply it to the case at bar, it would lend support to the theory that this Court's action in vacating and remanding for further proceedings was intended to permit the Georgia Supreme Court to make an authoritative judicial construction of a State statute.

It would appear that the necessity which compelled this Court to enunciate new constitutional standards for judging obscenity was the recognition by eight (8) members of this Court (excluding

Mr. Justice Douglas, whose dissent was upon other grounds) that the standards for judging obscenity were unconstitutionally vague and failed to give "fair warning" to an individual that his proposed course of conduct would subject him to criminal prosecution.

It was only as to the issue of how the vagueness problem might be rectified that the justices divided sharply -- five (5) joining in an opinion to set forth a new constitutional definition of obscenity and three (3), including Mr. Justice Brennan, holding that the definition of obscenity was so obscure that it could not be appropriately defined.

Mr. Justice Brennan makes a suggestion in his dissent in Miller vs. California, supra, that all States other than Oregon must now enact new obscenity

statutes and Mr. Chief Justice Burger, in his opinion for the majority, at footnote 6, disagrees with Mr. Justice Brennan's view of the effect of the holding of the majority and adds this caveat:

> "Other existing State statutes, as construed heretofore or hereafter, may well be adequate."

If this is the intended and probable meaning of this Court's action in vacating and remanding to the Georgia Supreme Court the within case, then should the Georgia Supreme Court authoritatively construe the State statute to engraft upon it the new standards promulgated, it should not apply to the parties before the Court and should be only view prospectively and not retrospectively.

This Court has stated in Linkletter vs. Walker, 381 U.S. 618 (1965) at

page 621:

> "A ruling which is purely prospective does not apply even to the parties before the Court."

See also:

> England vs. Board of Medical Examiners, 375 U.S. 411;
>
> Great Northern RR Co. vs. Sunburst Oil and Refining Co., 287 U.S. 358.

The newly announced decisions of the U. S. Supreme Court in Miller and Paris represent "a clear break with the past", in the words of Mr. Justice Stewart in Desist vs. U.S.A., 394 U.S. 244, 248 (1969).

Assuming the new constitutionally permissible standards announced by the U. S. Supreme Court to have been unforeseen by the managers of the theatres involved in this case as petitioners on December 28, 1970, then any new construction should be addressed to the prospective ruling only

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Assuming the new constitutionally
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U. S. Supreme Court to have been misapplied
by the managers of the theatres involved in
this case as petitioners on December 28,
1970, then any new construction should be
confined to the prospective ruling only

and this Court should so state prior to the matter being considered by the Georgia Supreme Court on remand.

C. THE GEORGIA SUPREME COURT UPON FURTHER PROCEEDINGS ON REMAND OF THIS CASE IS TO DISMISS THE SAME IN THAT AN AMNESTY FACTOR IS INVOLVED.

Mr. Chief Justice Burger, in the majority opinion in the case at bar, points to the prospective operation of the newly announced constitutional standard after either future legislative enactment or authoritative judicial construction, when he said:

> "Under the holdings announced today, no one will be subject to prosecution for the sale or exposure of obscene materials unless these materials depict or describe patently offensive 'hard core' sexual conduct specifically defined by the regulating State law, as written or construed. We are satisfied that these specific prerequisites will provide fair notice

> to a dealer in such materials that his public and commercial activities may bring prosecution. See Roth v. United States, supra, 354 U.S. at 491-492 (1957)."

A fair reading of the quote would suggest that the Court recognized that the standards under which the materials at bar were judged were unconstitutionally vague and pointed merely to the prospective operation of any obscenity statute.

By the action of the Court in vacating and remanding back approximately sixty-eight (68) cases involving both questions and procedures in substance, it would appear that the Court could be allowing an amnesty for the past with the abatement of Redrup and its concepts and the decisional law under Redrup and starting forth under a new set of rules which would apply merely prospectively.

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D. THE GEORGIA SUPREME COURT ON FURTHER PROCEEDINGS ON THE REMAND OF THIS CASE IS TO DETERMINE WHETHER THE NEWLY ANNOUNCED CONSTITUTIONAL CRITERIA FOR JUDGING OBSCENITY APPLY IN THE ABSENCE OF A MODE OF DISSEMINATION WHICH CARRIES WITH IT THE SIGNIFICANT DANGER OF OFFENDING THE SENSIBILITIES OF UNWILLING RECIPIENTS OR OF EXPOSURE TO JUVENILES.

In the Miller case, to which this Court has constantly made reference throughout the holding of the opinion in the within matter, after recitation of the factual summary of the matters involved in that case, in the opinion of the majority under Roman Numeral I, states as follows:

> "This case involves the application of a State's criminal obscenity statute to a situation in which sexually explicit materials have been thrust by aggressive sales action upon unwilling recipients who had in no way indicated any desire to receive such materials. This Court has

D. THE GEORGIA SUPREME COURT ON VARIOUS PROCEEDINGS ON THE REMAND OF THIS CASE IS TO DETERMINE WHETHER THE NEWLY ANNOUNCED CONSTITUTIONAL CRITERIA FOR JUDGING THE OBSCENITY ASPECT IN THE ABSENCE OF A MODE OF DISSEMINATION WHICH CARRIES WITH IT THE SIGNIFICANT DANGERS OF OFFENDING THE SENSIBILITIES OF UNWILLING RECIPIENTS OR OF EXPOSURE TO JUVENILES.

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"This case involves the application of a State's criminal obscenity statute to a situation in which sexually explicit materials have been thrust by aggressive sales action upon unwilling recipients who had in no way indicated any desire to receive such materials. This Court has

recognized that the States have a legitimate interest in prohibiting dissemination or exhibition of obscene material when the mode of dissemination carries with it a significant danger of offending the sensibilities of unwilling recipients or of exposure to juveniles. Stanley v. Georgia, 394 U.S. 557, 567 (1969). Ginsberg v. New York, 390 U.S. 629, 637-643 (1968). Interstate Circuit, Inc., v. Dallas, supra, 390 U.S. at 690 (1968). Redrup v. New York, 386 U.S. 767, 769 (1967). Jacobellis v. Ohio, 378 U.S. 184, 195 (1964). See Rabe v. Washington, 405 U.S. 313, 317 (1972) (Burger, C.J. concurring); United States v. Reidel, 402 U.S. 351, 360-362 (Marshall, J., concurring) (1971); Joseph Burstyn, Inc. v. Wilson, 343 U.S. 495, 502 (1952). Breard v. Alexandria, 341 U.S. 662, 644-645 (1951); Kovacs v. Cooper, 336 U.S. 77, 88-89 (1949); Prince v. Massachusetts, 321 U.S. 158, 169-170 (1944). Cf. Butler v. Michigan, 352 U.S. 380, 382-383 (1957); Public Utilities Comm'n v. Pollak, 343 U.S. 451, 464-465 (1952). It is in this context that we are called on to define the standards which must be used to identify obscene material that a State may regulate

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without infringing the First Amendment as applicable to the States through the Fourteenth Amendment."

In light of the foregoing, which seemingly is a condition precedent to the enforcement of a State's obscenity laws, the Court speaks of the context in which they define the standards which must separate the protected from the unprotected under the First Amendment.

If the language of the Court in utilizing the term "it is in this context that we are called on to define the standards which must be used. . ." has particular significance, it would seem to be at odds with the terminology set forth as the rationale for permitting a State to regulate obscenity set forth in the opinion of the Court in the within case.

The question is thus presented how do we reconcile and how can the Georgia

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It is true of the foregoing, which generally is a condition precedent to the enforcement of a State's obscenity laws, the court speaks of the content in which they define the standards which must separate the protected from the unprotected under the First Amendment.

In the language of the Court in utilizing the term "it is in this connection that we are called on to define the standards which must be used..." In this particular significance, it would seem to be at odds with the terminology set forth as the rationale for permitting a State to regulate obscenity set forth in the opinion of the Court in the within case.

The question is thus presented how do we reconcile and how can the courts

Supreme Court, without further guidance from this Court, reconcile a seeming inconsistency between the standards context of Miller and rejection of the consenting adults theory seemingly implicit in Paris?

Thus, Petitioners contend that a Motion for Rehearing should be granted and the Court restructure its opinion insofar as setting forth the purpose or the duty of the Georgia Supreme Court, to whom this matter is being remanded for further proceedings not inconsistent with Miller vs. California, supra.

II.

THE GEORGIA SUPREME COURT, AFTER JUNE 21, 1973 BUT PRIOR TO THE MANDATE HEREIN REMANDING AND VACATING, HAS NOW PURPORTEDLY AUTHORITATIVELY CONSTRUED THE GEORGIA STATE OBSCENITY STATUTE IN A MANNER INCONSISTENT WITH THE STANDARDS FASHIONED BY THIS COURT IN MILLER VS. CALIFORNIA.

The Georgia Supreme Court, on July 3, 1973 in a case entitled Jenkins vs. The State, No. 27692, in a 4-3 decision, held that the Georgia obscenity law was constitutional and that the accusation was framed in the proper language and that the jury's verdict utilizing local community standards of the forum, i.e., Dougherty County, Georgia, was correct in holding that the movie "Carnal Knowledge" was obscene under Georgia Law.

The movie "Carnal Knowledge" was a Mike Nichols production and received an "R" rating from the Motion Picture Association, and received serious and critical

11.

reviews in many newspapers throughout the United States including The Washington Post, The Evending Star, the New York Times and Atlanta Constitution. The majority of the justices of the Supreme Court of Georgia, in discussing Georgia obscenity statutes, state in pertinent part as follows:

> "It is our view that a statute can provide criminal punishment without the definition of obscenity being included within that specific code section. . ."
>
> "The Miller case, supra, further held that juries can consider State or local community standards in lieu of 'national standards' . . ."
>
> "This Court has held that the exhibition of an obscene picture is a crime involving the welfare of the public at large, since it is contrary to the standards of decency and propriety of the community as a whole. . ."
>
> "The Supreme Court of the United States which in effect has affirmed the Paris case, supra, held that the States

> have a legitimate right in regulating commerce and obscene materials. . ." (Emphasis supplied.)
>
> "We hold that the evidence in this record amply supports the verdict of guilty by the showing of the film 'Carnal Knowledge', in violation of the definition of distributing obscene materials under our Georgia statutes. . . "

As stated, this was a 4-3 decision and the foregoing comments were taken from the majority opinion. The following comments are taken from the dissenting opinion:

> "Today's majority decision has drastically narrowed the concept of the First Amendment as applied to the performing arts in Georgia and 'local communities' in Georgia. . ."
>
> "The decision of the Supreme Court of the United States in Miller vs. California, supra, inaugurated a new era in the continuing constitutional contest between obscenity-pornography and the First Amendment. . ."

"Miller gave a new definition of pornographic unprotected material. Miller laid down basic guidelines for the trier of fact to use in determining what is protected material from what is unprotected material; Miller changed the yardstick. . ."

". . . the Miller criteria had been applied by the majority in this case, affirming the Appellants' conviction. That that can be done, and for the majority to have done it in this case is, in my view, a denial of due process of law to the Appellant."

"To me, this retroactive application of the Miller yardstick has the effect of saying that a theater operator could rely on Jacobellis in January, 1972 in deciding whether to exhibit a film, but in April, 1973, when he was tried before a jury for exhibiting the film, it was all right for the court and jury to completely ignore the standard established by Jacobellis and apply a different standard which had not been enunciated at the time of the trial, and which would not be established by the Supreme Court of the United States until June 21, 1973."

> "In Division 4 of the Miller opinion, the Chief Justice [Burger] said: 'the dissenting justices sound the alarm of repression. . . these doleful anticipations assume that courts cannot distinguish commerce and ideas protected by the First Amendment from commercial exploitation of obscene material.'"
>
> ". . . My experience with this one case teaches me that the alarm of repression was validly sounded; it also teaches me that Miller's majority assumption, that courts can distinguish commerce and ideas that are protected from exploitation from obscene materials that are not protected, is a too optimistic assumption."

See also the commentary in Time Magazine July 16, 1973 at page 73 under the sub-heading "See No Evil," which discusses the Georgia Supreme Court decision.

If the Georgia Supreme Court by its decision of July 3, 1973 has refused to follow the suggestions of the majority of this Court in fashioning new standards under Miller vs. California,

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it is not necessary for this case to be vacated and remanded to determine whether the statute is void for vagueness because of unconstitutionality on its face, and should be held to be such by this Court.

When dealing with a claim of void for vagueness in the pneumbra of the First Amendment, we must be mindful of a decision of the United States Supreme Court in U.S.A. vs. National Dairy Products Corp., 372 U.S. 29, 32 (1963), wherein the Court stated:

> "In this connection we also note that the approach to 'vagueness' governing a case like this is different from that followed in cases arising under the First Amendment. There we are concerned with the vagueness of the statute 'on its face' because such vagueness may in itself deter constitutionally protected and socially desirable conduct. See Thornhill v. [State of] Alabama, 310 U.S. 88, 98, 60 S.Ct. 736, 742, 84 L.Ed. 1093 (1940); N.A.A.C.P. v. Button, 371 U.S. 415, 83 S.Ct. 328 [9 L.Ed. 2d 405] "

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If the Georgia Supreme Court refuses to authoritatively construe the statute in a manner consistent with the rationale of this Court and the standards fashioned in Miller, then this Court should grant the Petition for Rehearing and rule the statute to be repugnant to the Constitution of the United States for vagueness.

III.

THIS COURT SHOULD GRANT A REHEARING OR, IN THE ALTERNATIVE, MODIFY ITS DECISION TO HOLD THAT THE MOTION PICTURE FILMS INVOLVED IN THE CASE AT BAR ARE OR WERE PROTECTED EXPRESSION CONSISTENT WITH THE RULINGS OF THE MAJORITY OF THIS COURT IN THE THIRTY-ONE CASES FOLLOWING REDRUP VS. PEOPLE OF THE STATE OF NEW YORK, 386 U.S. 767.

This case arose in December, 1970 and was tried and decided by the lower court on the basis of Redrup vs. People of the State of New York. The

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383 U.S. 413.

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trial court on the basis of Memoirs vs.
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court found that this was a close case and as such it was to look to the circumstances of dissemination to determine whether or not the material fell on the unprotected side of the ledger. Setting as a fact finder and determining that there was no pandering, no intrusion into the privacy of unwilling adults or dissemination of the materials to juveniles, the court concluded that the materials could not be said to be obscene in the constitutional sense.

Whatever this Court has done to reject the casual approach of Redrup, the reliance upon the court's actions in the Redrup series of cases, the material should be viewed in the context of those materials declared by the majority of the court in each of the cases not to be obscene in the case at bar. Whatever change of standards is promulgated for the future, the failure of this Court to

court found that this was a close case and as such it was to look to the circumstances of discrimination to determine whether or not the material fell on the unprotected side of the ledger. Deciding as a fact finder and determining that there was no "pandering," no intrusion into the privacy of unwilling guests or dissemination of the materials to juveniles, the court concluded that the materials could not be said to be obscene in the constitutional sense.

Whatever this Court has done to reject the casual approach of Redrup, the reliance upon the court's actions in the Redrup series of cases, the material should be viewed in the context of those materials declared by the majority of the court in each of the cases not to be obscene in the case at bar. Whatever change of standards is promulgated for the future, the failure of this Court to

rule on the issue of the obscenity of the materials in light of the Redrup series of cases as those cases appeared through 1970, should be the subject for rehearing and reconsideration in the interests of the Petitioners' First and Fifth Amendment rights.

CONCLUSION

Petitioners herein would reiterate all of the constitutional arguments presented but not heretofore discussed in this Petition for Rehearing, set forth in their Petition for Certiorari and Brief, and ask the Court to reconsider all of those arguments on the question of rehearing.

Since the decision of this Court, which created as many new questions and problems as it apparently purported to solve, the following acts have occurred

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to solve, the following acts have occurred

at the instigation of law enforcement officials:

(a) In Louisville, Kentucky, on Friday, July 13, 1973, approximately 200,000 magazines and books were burned on ex parte order of a trial judge without notice to the defendants. All of these books and magazines had been the subject of seizures without search warrants, and the prosecutional practice employed there was condemned by the U. S. Supreme Court in Rhoaden vs. Kentucky, decided on June 25, 1973;

(b) A prosecutor entered an adult bookstore in Knoxville, Tennessee and seized under a general warrant approximately 873 different books and magazines which he felt, in his opinion, were obscene employing the Roth-Memoirs test; This was done on approximately June 26, 1973. After the seizure of one copy of

the investigation of law enforcement
officials.

(a) In Louisville, Kentucky, on Friday, July 13, 1973, approximately 400,000 magazines and books were burned in an open order of a trial judge without notice to the defendants. All of these books and magazines had been the subject of seizures without search warrants, and the prosecutions' practice employed there was condemned by the U. S. Supreme Court in Bloeden vs. Kentucky, decided on June 25, 1973.

(b) A prosecutor entered an adult bookstore in Knoxville, Tennessee, and - pursuant under a general warrant approximately 813 different books and magazines which he felt, in his opinion, were obscene employing the Roth-Memoirs test. This was done on approximately June 15, 1973. After the seizure of one copy of

each publication, the court issued an injunction prohibiting the sale or exhibition of any remaining copies of the books and magazines seized, thus creating a total prior restraint;

(c) On or about June 22, 1973, the mayor of Macon, Georgia led a raid on several supermarkets and made seizures and arrests for "Playboy" and "Oui" magazines;

(d) On or about June 28, 1973 the district attorney arrested the proprietor of a 7-11 foodstore in Savannah, Georgia under the Georgia obscenity law for selling a mild sex scandal newspaper entitled the "National Insider;"

(e) On or about June 23, 1973, a prosecuting attorney in Montgomery, Alabama arrested the proprietor of a magazine stand in the Greyhound Bus Terminal on the charge of selling "Playboy"

...tion prohibiting the sale or exhibition
...of any remaining copies of the books and
...magazines seized, thus creating a total
...prior restraint.

(c) On or about June 12, 1973, the
...Mayor of Macon, Georgia led a raid on
...several supermarkets and made seizures
...arrests for "Playboy" and "Oui" magazines.

(d) On or about June 18, 1973 the
...District Attorney arrested the proprietor
...of a 7-11 foodstore in Savannah, Georgia
...under the Georgia obscenity law for selling
...a wild sex scandal newspaper entitled the
..."National Inquirer".

(e) On or about June 21, 1973, a
...prosecuting attorney in Montgomery,
...Alabama arrested the proprietor of a
...Pizza stand in the Greyhound Bus
...Terminal on the charge of selling "Playboy"

magazine, in violation of the Alabama obscenity law;

(f) In Charlottesville, Virginia cases have been made during the first week of June against stores which are selling "Playboy" magazine, for violation of the common laws of the Virginia obscenity statutes;

(g) On or about July 1, 1973 in Tulsa, Oklahoma, prosecutors, with the concurrence of the trial judge but without any adversary hearing, seized approximately 100,000 books and magazines representing in all copies of about 1,200 different titles, in the guise of the enforcement of the State of Oklahoma obscenity statutes;

(h) On or about July 11, 1973, the police in Columbus, Georgia seized all books and magazines, as well as store equipment, cash registers and the like,

magazine, in violation of the Alabama
obscenity laws.

(i) In Charlottesville, Virginia
agents have been media during the first week
of June against stores which are selling
"playboy" magazine, for violation of the
common laws of the Virginia obscenity
statutes.

(j) On or about July 1, 1973 in
Enid, Oklahoma, prosecutors, with the
concurrence of the trial judge but without
any adversary hearing, seized approximately
100,000 books and magazines representing
in all copies of about 3,500 different
titles, in the guise of the enforcement
of the State of Oklahoma obscenity
statutes.

(k) On or about July 11, 1973, the
police in Columbus, Georgia seized all
books and magazines, as well as store
equipment, coin registers and the like,

in the guise of enforcing the State of Georgia obscenity law;

(i) On or about July 14, 1973, prosecution officials in the City of Birmingham, Alabama seized approximately 20 to 30,000 publications out of an adult bookstore, which represented all copies of the publications, in the guise of enforcing the State of Alabama obscenity statute.

This grouping of events which counsel represents have occurred since June 21, 1973 represent but a small percentage of the number of incidents which have occurred with regularity by over-zealous polic officials and prosecutional authorities in the guise of enforcing respective State obscenity statutes.

Hopefully, by the time this Court has an opportunity to consider this

Petition for Rehearing after the Court reconvenes in October, we shall be in a position to furnish the Court before that time a documentation of numerous abuses that have occurred in the name of bona fide law enforcement.

These very things to which we point have had and threaten to have the effect of causing a "chilling of speech" and inducing self-censorship, which will stiffel artistic expression and creativeness for the future.

Surely, in the face of these abuses as they can be documented, if we are to await an independent appe llate review by the U. S. Supreme Court some two or three years hence as to each one of these matters, there will be nothing left to review because the forces of censorship will have stiffled all expression that is in any way related to the sex field.

The majority makes reference in its decision to the Hill-Link Minority Report of the Commission on Obscenity and Pornography. It is interesting to note that Father Morton Hill, one of the authors of that dissent in a trial in which this counsel participated, when asked to define how he would arrive at what contemporary community standards were in a community, stated that anything that could not appear on public television with children and adults watching, and anything that could not appear on the front page of the daily metropolitan newspaper, would be violative of the contemporary community standard. Father Hill's narrow thinking and restrictions he would impose upon what contemporary community standards were would, if adopted by this Court and permitted to flourish, restrict the level of what adults could read and see to that of children, a view which counsel thought had been rejected by this Court in Butler vs. Michigan, 352 U.S. 380 (1957).

For the reasons stated herein, as well as predicated on the arguments contained in the original Petition for Certiorari and Brief of Petitioners, the Court should reconsider and grant the Petition for Rehearing.

Respectfully submitted,

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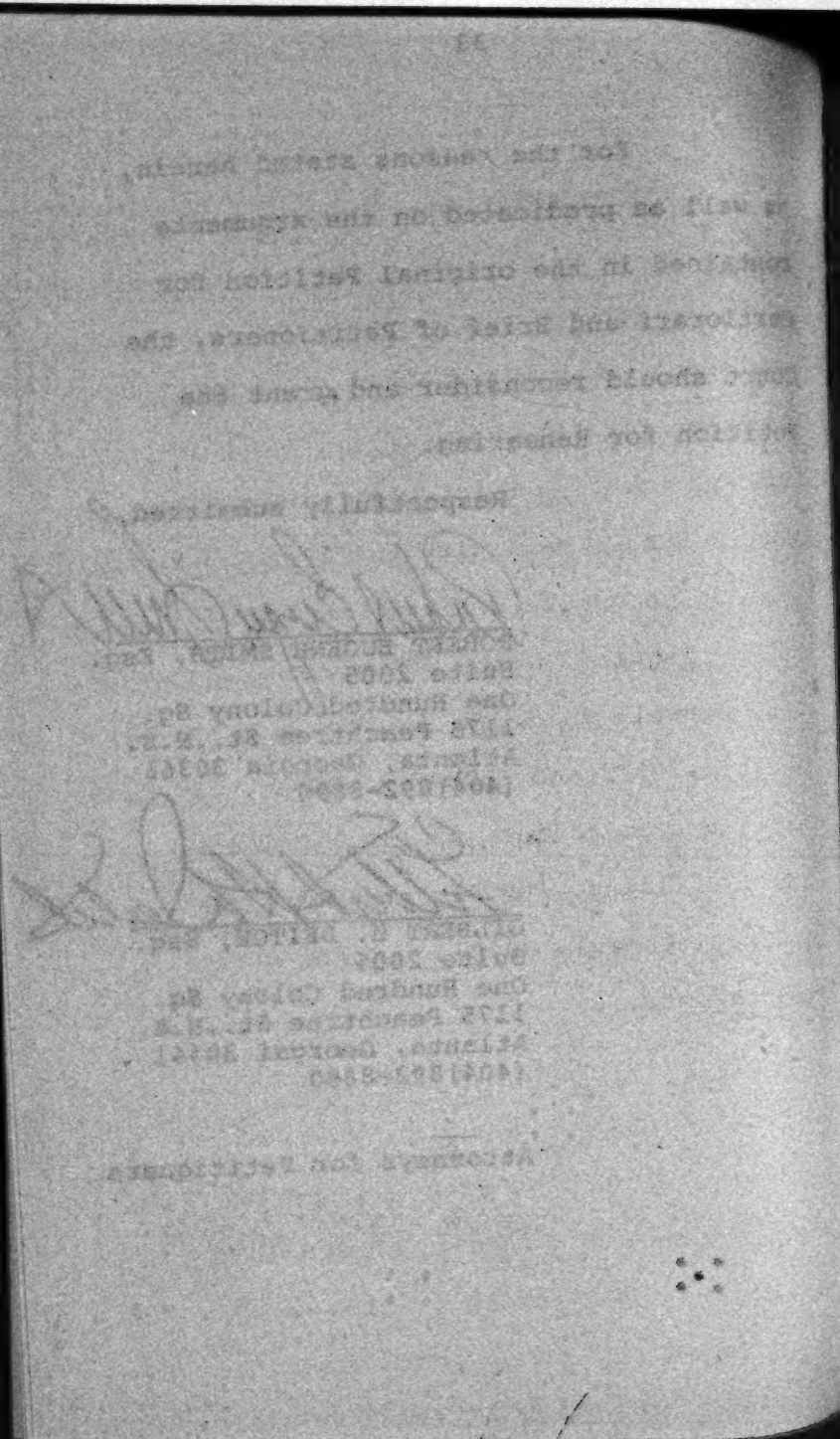

CERTIFICATE OF SERVICE

This is to certify that a true and exact copy of the within and foregoing Petition for Rehearing was served upon opposing counsel by placing same in the United States Mail with sufficient postage thereon to ensure delivery to THOMAS E. MORAN, Esquire, Suite 820 Northside Tower, 6065 Roswell Road., N. W., Sandy Springs, Georgia 30328 and THOMAS R. MORAN, Esquire, Assistant Solicitor, 53 Civil Criminal Court Building, 160 Pryor Street, S.W., Atlanta, Georgia 30303, Attorneys for Respondents.

This 16th day of July, 1973.

ROBERT EUGENE SMITH

CERTIFICATE OF SERVICE

This is to certify that a true and exact copy of the within and foregoing petition for homestead was served upon opposing counsel by placing same in the United States mail with sufficient postage thereon to assure delivery to THOMAS E. MORAN, Esquire, Suite 210 Northside Tower, 660 Roswell Road, N. W., Sandy Springs, Georgia 30328 and THOMAS N. MOORE, Esquire, Ben Hand Building, 53 Civil Criminal Court Building, 160 Pryor Street, S.W., Atlanta, Georgia 30303, addressee for respondents.

This 16th day of July, 1991.

ROBERT ELLIOTT SMITH

CERTIFICATE OF COUNSEL

ROBERT EUGENE SMITH, one of the attorneys for Petitioners, does state and affirm that the Petition for Rehearing to which this certificate is attached is presented by counsel to the Court in good faith and not for the purposes of delay.

The decision of the Court in this case in which a rehearing is sought was a clear departure from the prior decisions of this Court, and was reached by a sharply divided Court.

The circumstances are such that it should be patently clear that the within Petition is filed in good faith.

ROBERT EUGENE SMITH

Counsel for Petitioners